IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

WP(C).No. 24409 of 2007(E)

PETITIONER:

MANOJ S.SINGH, AGED 38 YEARS,
SON OF SHIVYAG SINGH, PROPRIETOR,RAUNAK AGENCY,
SHOP NO.1, BABUBHAI GAYAKWAD COMPOUND,
TRIKAMDAS ROAD, KANDIVALI (WEST),MUMBAI-400 067.

BY ADV. DR.K.B.MUHAMED KUTTY (SR.)
SRI.B.ASHOK SHENOY
SMT.LAKSHMI B.SHENOY
SRI.ABU MATHEW
SRI.ANIL KURIAN THOMAS
SRI.SOBHAN GEORGE
SRI.H.B.SHENOY

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
TAXES (H) DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

3. THE ASSISTANT COMMISSIONER (ASSESSMENT),
SALES TAX OFFICE, SPECIAL CIRCLE I, ERNAKULAM,
KOCHI-682 018.

4. THE DIRECTOR OF LOTTERIES,
THIRUVANANTHAPURAM.

BY G.P. SRI.C.K.GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.24409 of 2007

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Dated this the 23th day of August, 2007.

JUDGMENT

The petitioner is challenging constitutional validity of Kerala Tax on Paper Lotteries Act 2005 as amended by Finance Act 2007. The issues raised are covered against the petitioner vide judgment of this court in W.P. (C) No.12189/2007 dated 29.6.2007. In addition to the points raised and decided in that case, Senior Counsel appearing for the petitioner referred to Section 4(g) of the Lotteries(Regulation) Act, 1998 which stipulates that place of draw of the lottery shall be located within the State concerned and contended that since the draw does not take place in Kerala, tax could not be levied in Kerala. I find this is only an aspect of one of the grounds raised by the petitioners in the other W.P. wherein validity of legislation was questioned on the ground of extraterritorial application of the Act. It was held that even though the tax is based on the draw, the taxable transaction is the marketing of lottery tickets in the State. In other words, if gambling is permitted in the State which happens by extensive sale of lottery tickets, liability can be imposed for such transactions in the State because the draw of the prize is only culmination of the gambling activity that takes place

outside the State. So long as petitioner is engaged in sale of lottery tickets in the State, petitioner is engaged in gambling and therefore, legislation rightly applies and the incidence of tax under Section 6 read with Section 7 of the Act falls on the petitioner in this State. Therefore, following the judgment in the abovereferred W.P., this W.P. is also dismissed.

C.N.RAMACHANDRAN NAIR
Judge

pms